

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

ROGELIO LOPEZ,

Petitioner,

ORDER

v.

08-cv-408-slc

GREG GRAMS, Warden,
Columbia Correctional Facility,

Respondent.

Before the court is petitioner's request for leave to proceed *in forma pauperis* on appeal. Although I did not grant petitioner a certificate of appealability, I stated in a previous order that I would not certify that his appeal was not taken in good faith for purposes of proceeding *in forma pauperis*. However, I could not make a final determination until petitioner submitted an affidavit of indigency accompanied by the required six-month trust account statement, which he has now done.

This court uses the following formula to determine whether a prisoner is indigent for purposes of appeal or whether he must prepay all or a portion of the appellate filing fee. First, the court determines petitioner's average monthly deposits and his average monthly balances for the six-month period mentioned above. If 20% of the greater of these two figures is \$455 or more, the petitioner is not eligible for indigent status and will have to

prepay all of the \$455 filing fee. If 20% of the greater of these two figures is less than \$455, he will be required to prepay whatever portion less than \$455 has been calculated. Applying this formula to petitioner, I find that he is able to pay at least a portion of the appellate filing fee. According to the trust account statement, in the past six months petitioner's average monthly deposits are \$194.34 and his monthly balance has averaged \$167.65. (In determining this latter figure, I have presumed that the \$667.65 shown on petitioner's trust account statement includes \$500 of unusable funds that are in petitioner's release account.) Twenty percent of the greater of these two figures is \$38.86. Accordingly, I will grant petitioner's application for leave to proceed *in forma pauperis* on the condition that he prepay \$38.86.

ORDER

IT IS ORDERED that petitioner's request for leave to proceed *in forma pauperis* is GRANTED on the condition that he prepay the amount of \$38.86. Petitioner may have until January 29, 2010 in which to pay this amount. If by January 29, 2010 petitioner fails to pay the initial partial payment or explain his failure to do so, then I will advise the court

of appeals of his noncompliance in paying the assessment so that it may take whatever steps it deems appropriate with respect to this appeal.

Entered this 7th day of January, 2010.

BY THE COURT:

/s/

BARBARA B. CRABB
District Judge